

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR 13-3367 RB

JESSIE JESUS MARQUEZ,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendant's Motion for Reduction of Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(2), filed on May 26, 2017. (Doc. 551.) Having reviewed the Motion, the record, and the applicable law, the Court finds the motion is not well-taken and should be **denied**.

I. Background

On January 27, 2016, a jury found Defendant guilty of one count of conspiracy involving more than 500 grams of a mixture and substance containing methamphetamine, one count of possession with intent to distribute a mixture and substance containing methamphetamine and aiding and abetting, and four counts of using a communication facility to further the commission of a drug trafficking crime. (*See* Doc. 487.) The United States Probation Office prepared a Presentence Report (PSR)¹ in anticipation of Defendant's sentencing hearing and recommended that Defendant be held responsible for conspiracy to distribute from 500 to 1,500 grams of a mixture containing methamphetamine, with no role adjustment warranted. (PSR at 27.) Based on the 2014 U.S. Sentencing Guidelines Manual § 2D1.1, the Probation Office calculated a base

¹ All citations to the PSR are to the copy provided to the Court by the U.S. Department of Probation. The PSR has not been filed on CM/ECF. The Court will cite to the PDF pagination, rather than to the internal PSR pagination, as not all page numbers in the PSR are numbered.

offense level of 30. (PSR at 28–29.) *See also* U.S.S.G. § 2D1.1 (assigning an offense level of 30 for an amount of “[a]t least 500 G but less than 1.5 KG of Methamphetamine”). On February 15, 2017, the Court sentenced Defendant to 121 months imprisonment, followed by five years of supervised release. (Docs. 527; 529 at 3–4.) Mr. Marquez has since appealed his sentence to the Tenth Circuit, where it is pending. (*See* Doc. 531.)

II. Analysis

“When a ‘motion for [a] sentence reduction is not a direct appeal or a collateral attack under 28 U.S.C. § 2255, the viability of [the] motion depends entirely on 18 U.S.C. § 3582(c).’” *United States v. Sharkey*, 543 F.3d 1236, 1238 (10th Cir. 2008) (quoting *United States v. Smartt*, 129 F.3d 539, 540 (10th Cir. 1997) (internal quotation and alteration omitted)). “Section 3582(c) provides that a ‘court *may not* modify a term of imprisonment once it has been imposed except’ in three limited circumstances.” *Smartt*, 129 F.3d at 540–41 (quoting 18 U.S.C. § 3582(c); subsequent citation omitted). “First, upon motion of the Director of the Bureau of Prisons, a court may reduce the term of imprisonment if it finds special circumstances exist.” *Id.* (citing 18 U.S.C. § 3582(c)(1)(A)(i), (ii)). “Second, a court may modify a sentence if such modification is ‘otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure.’” *Id.* (quoting 18 U.S.C. § 3582(c)(1)(B)). “Finally, a court may modify a sentence if ‘a sentencing range . . . has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o).’” *Id.* (quoting 18 U.S.C. § 3582(c)(2)). Mr. Marquez asks the Court to reduce his sentence pursuant to this last provision.

Amendment 782 to the Guidelines went into effect “on November 1, 2014, and applies retroactively.” *United States v. Goodwin*, 635 F. App’x 490, 493 (10th Cir. 2015). “The amendment ‘reduced the base offense levels assigned to drug quantities in U.S.S.G. § 2D1.1,

effectively lowering the Guidelines minimum sentences for drug offenses.’” *United States v. Kurtz*, 819 F.3d 1230, 1234 (10th Cir. 2016) (quoting *Goodwin*, 635 F. App’x at 493 (citing U.S.S.G., suppl. to app. C, amend. 782 (2014)); subsequent citation omitted). The 2014 Guidelines Manual, which was used by the probation officer who drafted the presentence report, incorporated Amendment 782. *See, e.g.*, U.S.S.G. §§ 1B1.10(d), 2D1.1 Historical Note. (*See also* PSR ¶ 108.) Thus, Mr. Marquez automatically benefited from Amendment 782, which was reflected in the base offense level assigned in § 2D1.1. Mr. Marquez’s Motion is, therefore, moot.

THEREFORE,

IT IS ORDERED that Defendant’s Motion for Reduction of Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(2), (Doc. 551) is **DENIED AS MOOT**.



ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE